

receives remuneration or to a person or organization from which the substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring an employee for assistance provided through—

(i) A public agency, such as a State, county, or municipality;

(ii) The employer or a person under contract to provide treatment for prohibited drug use problems on behalf of the employer;

(iii) The sole source of therapeutically appropriate treatment under the employee's health insurance program; or

(iv) The sole source of therapeutically appropriate treatment reasonably accessible to the employee.

(c) An employer shall ensure that, before returning to duty to perform a safety-sensitive function, a covered employee has complied with the referral and evaluation provisions of this part and takes a return to duty drug test with a verified negative result under § 653.49.

(d) The requirements of this section do not apply to applicants.

[59 FR 7589, Feb. 15, 1994, as amended at 60 FR 12297, Mar. 6, 1995]

### Subpart C—Types of Drug Testing

#### § 653.41 Pre-employment testing.

(a) An employer may not hire an applicant to perform a safety-sensitive function unless the applicant takes a drug test with a verified negative result administered under this part.

(b) An employer may not transfer an employee from a nonsafety-sensitive function to a safety-sensitive function until the employee takes a drug test with a verified negative result administered under this part.

(c) If an applicant or employee drug test is canceled, the employer shall require the employee or applicant to take another pre-employment drug test.

#### § 653.43 Reasonable suspicion testing.

(a) An employer shall conduct a drug test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug.

(b) An employer's determination that reasonable suspicion exists shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. The required observations must be made by a supervisor who is trained in detecting the signs and symptoms of drug use.

[59 FR 7589, Feb. 15, 1994, as amended at 60 FR 12297, Mar. 6, 1995]

#### § 653.45 Post-accident testing.

(a)(1) *Fatal accidents.* As soon as practicable following an accident involving the loss of human life, an employer shall test each surviving covered employee operating the mass transit vehicle at the time of the accident. The employer shall also test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

(2) *Nonfatal accidents.* (i) As soon as practicable following an accident not involving the loss of human life, in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, the employer shall test each covered employee operating the mass transit vehicle at the time of the accident unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident. The employer shall also test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

(ii) As soon as practicable following an accident not involving the loss of human life, in which the mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the employer shall test each covered employee operating the mass transit vehicle at the time of the accident unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the